# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>June 12, 2007 |
| v | No. 268040<br>Oakland Circuit Court |
| JEFFREY LAMONT AARON,<br><br>Defendant-Appellant. | LC No. 2005-203022-FC |

Before: Bandstra, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his convictions for assault with intent to murder, MCL 750.83; first-degree home invasion, MCL 750.110a(2); and criminal sexual conduct, assault with intent to commit sexual penetration, MCL 750.520g(1). He was convicted on September 7, 2005, following a jury trial, and was sentenced as an habitual offender, fourth offense, MCL 769.12, to 60 to 90 years' imprisonment for each conviction. We affirm.

## I Speedy Trial

Defendant first argues that his right to a speedy trial under the Interstate Agreement on Detainers Act (IAD), MCL 780.601, was violated. The prosecution, based on Michigan Department of Corrections (MDOC) officials' testimony, asserted before the trial court that defendant was not brought back from Florida to Michigan using the IAD because he was a parolee and had waived extradition. The defendant contends that the statute should nevertheless apply and that it supported the dismissal of the charges against him. We review the denial of a motion to dismiss for an abuse of discretion. *People v Herndon*, 246 Mich App 371, 389; 633 NW2d 376 (2001). Issues of constitutional law and statutory interpretation, however, are reviewed de novo. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006).

The IAD requires that a defendant who is imprisoned in another state and who is placed on detainer must deliver notice of the place of his imprisonment along with a request for final disposition. MCL 780.601; *People v Gallego*, 199 Mich App 566, 567-568; 502 NW2d 358 (1993). That notice must be provided to the prosecuting attorney of the jurisdiction where the charges are pending, MCL 780.601, and *delivery* of the required notice starts the running of the IAD's 180-day period to try defendant. *People v Fex*, 439 Mich 117, 120-121; 479 NW2d 625 (1992); see also *Williams, supra* at 256. If the defendant is not tried on the charges within the

180 days (or within 120 days of arrival in the state), the charges must be dismissed with prejudice. MCL 780.601.

Defendant argues that he was placed on a detainer either in July 2003, when the MDOC placed a warrant for absconding from parole in the Law Enforcement Information Network (LEIN), or later, when Pontiac Police had discussions with Florida law enforcement officials and asked them to hold defendant for extradition. We disagree. Verbal requests to hold a defendant pending charges along with a warrant placed in LIEN are insufficient to activate the IAD. *People v Shue*, 145 Mich App 64, 68-70; 377 NW2d 839 (1985). Defendant was not placed on a detainer.

Furthermore, it is clear that the IAD does not apply to pretrial detainees or parolees awaiting revocation of parole because such defendants are not serving a term of imprisonment. *People v Wilden*, 197 Mich App 533, 539; 496 NW2d 801 (1992); *Shue, supra* at 71 (noting that the IAD is not applicable to parole violation detainers); *People v Monasterski*, 105 Mich App 645, 653; 307 NW2d 394 (1981) (holding that the IAD does not apply to pretrial detainees or parolees awaiting revocation). The federal courts, too, have ruled that the IAD does not apply to a person "imprisoned awaiting disposition of pending charges and who has not been sentenced to a term of imprisonment." *United States v Muhammad*, 948 F2d 1449, 1453 (CA 6, 1991). In this case, defendant was arrested in Florida July 25, 2003, but was not convicted of the Florida charges until August 25, 2004. He was returned to Michigan within thirty days of his conviction. During the fourteen months that he spent in Florida while awaiting disposition of a pending charge, he was not serving a term of imprisonment. Thus, the IAD does not apply to his case.

Moreover, we note that, even if the IAD did apply to defendant's case, defendant failed to comply with the statute's notice requirements. The notice requirements of the IAD must be complied with strictly. *Gallego, supra* at 573. It is insufficient for a defendant to give notice to the authorities holding him; rather, he must *cause delivery* to the prosecutor, that is, actual receipt, for the 180 days to run. *Fex, supra* at 120-121, 123. In *Williams, supra* at 256, the Supreme Court specifically referred to the IAD requirement of actual receipt when it adopted that interpretation for the state's 180-day rule: the notice must be received by the prosecutor to start the period. Defendant has provided no evidence that he ever sent a notice of his imprisonment and request for final disposition to the Florida authorities, or that the prosecutor of Oakland County received such communication. In addition, if defendant did send the notice and request, actual delivery is what matters, and the prosecutor's office never received notification. *People v Bowman*, 442 Mich 424, 429; 502 NW2d 192 (1993). Thus, the 180-day period under the IAD never began, and there can be no violation of the statute.

Defendant next argues that his right to a speedy trial under the Michigan 180-day rule was violated. We disagree. Michigan's 180- Day Rule, MCL 780.131(1) provides in part:

> Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or compliant setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice

> of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint.

If the jurisdiction fails to bring an incarcerated defendant to trial within the 180-day period, the court is divested of jurisdiction and the charge must be dismissed. MCL 780.133; MCR 6.004(D)(2); *Williams, supra* at 252. Although the 180-day rule was formerly construed to be inapplicable to a pending charge when the defendant was subject to mandatory consecutive sentencing, for example, as a parolee, *People v Chavies*, 234 Mich App 274, 2798-280; 593 NW2d 655 (1999), that judicial exception was overruled in *Williams, supra* at 255. The *Williams* holding was given limited retroactive effect, but applies here because defendant's case was pending and he had raised and preserved the issue. *Id.*

The 180-day period under the Michigan statute begins on the day after the prosecutor receives notice from the MDOC that the defendant is incarcerated and awaiting trial on pending charges. *Id* at 256-257 n 4. The requirement is specific; the notice must be delivered to the prosecutor; delivery to the investigating officer is insufficient. *Id.* at 256; MCL 780.131(1). The *Williams* Court explicitly noted that the court rule referenced by defendant in arguing a 180-day violation, MCR 6.004, was amended January 1, 2006, to conform to the statute. *Id*. at 258. That amendment deleted the language that the 180 days began to run when the MDOC knows or has reason to know of pending charges. MCR 6.004. Thus, the only action that begins the 180-day period is the delivery of notice to the prosecutor, unless the statutory exceptions apply.[1] *Id.* at 254. Here, the Oakland County prosecutor did not receive notice and a request from the MDOC. The 180-day period never ran, and there is no violation of the statute. The trial court did not err when it denied defendant's motion to dismiss. We additionally note that, if the 180-day period ran from the date that defendant's parole was revoked and if excusable delays and delays not attributable to the prosecution were considered, defendant was actually tried within 180 days.

II Failure to Investigate

Defendant also argues on appeal that his constitutional right to due process of law was denied by the Pontiac Police Department's failure to fully investigate the crime. He specifically finds fault with the department's decision not to perform DNA testing on various blood samples taken at the scene, not to fully investigate, and not to consider other suspects. We disagree.

At the outset, we note that the issue related to DNA testing is waived. Defendant objected below to the prosecution's request for a continuance to allow for DNA testing of the blood samples. He specifically stated that he was making a strategy decision to oppose the adjournment because he did not wish to risk the possibility that additional evidence against him would be discovered. Defendant may not claim an action is error if he contributed to the error by plan or negligence, *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997), and a

[1] The statutory exceptions are when an inmate has committed an offense while incarcerated in a state correctional facility, and when an inmate has committed an offense after escaping from the correctional facility. MCL 780.131(2)(a) and (b). Neither exception applies in this case.

defendant may not advocate a position before the trial court and argue on appeal that the decision in his favor was error. *People v Aldrich*, 246 Mich App 101, 111; 631 NW2d 67 (2001).

Next, we find no merit in defendant's claim that he was denied due process. The prosecutor's duty to disclose evidence does not require that the prosecutor has a duty to investigate all other possible suspects, and there is a clear distinction between the prosecutor's duty to disclose evidence to the defendant and a duty to develop evidence for the defendant. *People v Coy*, 258 Mich App 1, 22; 669 NW2d 831 (2003). A prosecutor is not required to "seek and find exculpatory evidence" or assist in building the defendant's case, and it is not required to "negate every theory consistent with defendant's innocence." *Id.* at 21. Unless the defendant can show the suppression of evidence, intentional misconduct, or bad faith, the prosecutor and the police are not required to perform DNA testing to satisfy due process. *Id*. In addition, unless defendant can show bad faith, the police's failure to preserve evidence does not violate due process. *Arizona v Youngblood*, 488 US 51, 58; 109 S Ct 333; 102 L Ed 2d 281 (1988).

Defendant has not alleged that police acted in bad faith, or that they intentionally destroyed or suppressed evidence. He asserts only that that the department was negligent in its investigation. After reviewing the testimony, we conclude that there is no evidence of bad faith or intentional misconduct, although the department appears to have been negligent in not timely investigating and preserving all potential evidence. Because there is no evidence of bad faith, defendant's right to due process was not violated by the police's failure to perform DNA testing, preserve other potential evidence, or conduct a more complete investigation.

Affirmed.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Karen Fort Hood